

Appl. No. 09/876,413
Amdt. dated 07/22/2004

REMARKS

Responsive to the communication mailed on May 27, 2004, Applicants provide the following remarks in an effort to address the issues noted by the Examiner and to more particularly point out and distinguish their invention. No new matter has been added to the application. Reconsideration and reexamination are, therefore, respectfully requested.

Status of the Claims

Claims 1 and 9 are currently amended.

Claims 1-10 remain pending in the application.

Rejections under 35 USC § 103(a)

Claims 1-3 and 9 stand rejected under 35 USC § 103(a) as being unpatentable over *Mandellos* (US 5,861,533) in view of *Abramson*. (US 5,049,725).

In order to establish a prima facie case for obviousness, there must be some reason, suggestion or motivation to combine or modify the cited references. As stated by the Federal Circuit:

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. In re ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed Cir. 1984).

On page three of the Office Action (second full paragraph), the Examiner states that the motivation for combining *Mandellos* and *Abramson* stems from *Abramson's* teaching to "markedly reduce the temperature of the reflectors 20 from what it would

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otherwise be in those situations in which too high a temperature threat might otherwise occur." (*Abramson*, column 4, lines 55-60). In *Abramson*, the flow of a gaseous coolant such as air is used to cool the structure. In direct contradistinction, Applicants' invention is designed to avoid any cooling of the structure, as indicated in paragraph [0063] of the specification, which states the following:

It has been demonstrated that the UV intensity emitted by a discharge tube lamp type such as the one used in the present invention increases significantly with its operating temperature. **It is therefore advantageous to design such system to operate under conditions that provides the highest environmental temperature.** An advantage of the system of the present invention is that it utilizes the higher temperatures of the return air before it is cooled by the HVAC coil to increase the efficiency of the irradiation.

Emphasis added. In sum, the object of *Abramson* is to cool the structure to avoid high temperatures, while the object of Applicants invention is to prevent cooling of the structure so that the structure operates under high temperatures. To claim this distinction, Applicants have amended claims 1 and 9 to include the limitation that the reflector/shield deflects air away from said ultra-violet lamp to avoid cooling of said lamp to increase irradiation efficiency of said lamp. This limitation is fully supported by paragraphs [0063] and [0064] of the specification.

In view of the above arguments and amendment, Applicants respectfully submit that the combination of *Mandellos* and *Abramson* fails to teach each and every element of the claimed invention; furthermore, there is no suggestion, teaching or motivation to combine the references as *Abramson* clearly teaches away from Applicants' invention. Applicants believe that claims 1 and 9 are allowable as amended, and claims 2-3 are

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allowable as they depend either directly or indirectly on amended claim 1. Withdrawal of this rejection is respectfully requested.

Claims 4-7 stand rejected under 35 USC § 103(a) as being unpatentable over *Mandellos* (US 5,861,533) in view of *Abramson*. (US 5,049,725), as applied to claim 1, and further in view of *Funomoto et al.* (US 6,108,060). In view of the above arguments and amendment, Applicants believe that claims 4-7 are allowable as said claims depend either directly from amended claim 1. Withdrawal of this rejection is respectfully requested.

Claims 8 and 10 stand rejected under 35 USC § 103(a) as being unpatentable over *Mandellos* (US 5,861,533) in view of *Abramson*. (US 5,049,725), as applied to claims 1 and 9, and further in view of *Lumpp* (US 4,596,935). In view of the above arguments and amendment, Applicants believe that claims 4-7 are allowable as said claims depend either directly from amended claims 1 or 9. Withdrawal of this rejection is respectfully requested.

Conclusion

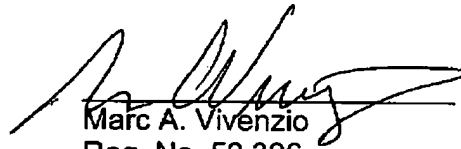
At least for the foregoing reasons, Applicants respectfully submit that the application is in condition for allowance as all the pending claims are considered to define patentably over the prior art. If, for any reason, the Examiner is inclined to further reject any of the claims, Applicants requests that counsel be contacted to resolve any remaining issues. Reconsideration is requested and favorable action is earnestly solicited.

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FEE STATEMENT

It is believed that no fees are due at the present time; however, the Commissioner is hereby authorized to charge any additional fees, which may be required for this response, or credit any overpayment, to Deposit Account No. 12-2147.

Respectfully Submitted,
Lorusso Loud & Kelly LLP



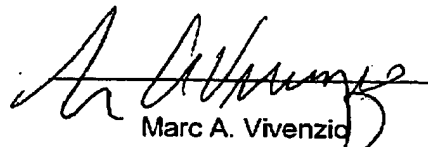
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Dated: July 22, 2004

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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this Amendment and Response and any paper or document referred to therein as being attached or enclosed, is being facsimile transmitted to the United States Patent and Trademark Office on July 22, 2004 to fax number: (703) 872-9306.



Marc A. Vivenzio